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SELECT COMMITTEE ON CONSUMER CREDIT

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October 26, 1964

THE CHAIRMAN: Gentlemen, we have a quorum so I will call the meeting to order.

This afternoon we are going to hear from Mr. Ziegel, Associate Professor of Law, University of Saskatchewan. Professor Ziegel was in touch with us very shortly after the Committee was originally set up and has been in touch with us off and on ever since, trying to set a mutually satisfactory date and it just happens that he was able to be with us at this time and we welcome him here this afternoon.

He has put a lot of work into his brief and we will just let him proceed in any way that he would like to. Professor Ziegel.

MR. ZIEGEL: Thank you very much, Mr. Chairman. With your permission, Mr. Chairman, and honourable members, I would like to read at least part of my brief, and then perhaps we can decide after a while whether you would like me to read all of it or whether you would prefer to put questions to me on the points raised in the various parts that have been read.

Mr. Chairman and honourable members of the Committee: I feel privileged to have been invited to appear before you today, and I hope that my remarks may be of some assistance to you. In view of my background, I felt that I could best be of assistance to the Committee by presenting a short historical and comparative survey of the retail instalment sales legislation which has been adopted in the other Provinces of Canada and in several non-Canadian

common law jurisdictions with a high volume of consumer credit. For this purpose I have selected the United States, the United Kingdom and Australia. Time does not permit me to offer a detailed analysis of the legislative provisions to which I shall refer, but I shall be only too happy to answer questions and to enlarge upon any point raised in my survey. I have made an exception in the case of the disclosure problem, and my comments on this topical subject appear in the form of an Addendum to the survey. The reason for the exception is that I know the Committee has been much exercised over the problem and has received many briefs opposing a compulsory "truth in lending" law. I believe these criticisms can be answered, and in my Addendum I have tried to do just that.

I might add, Mr. Chairman, my Addendum appears at pages 31 to 36 of my brief.

Before I start my survey, a sketch of the material problems which a legislature may have to face may be helpful. These problems may be grouped under six heads: (i) frank and full disclosures in the written contract of the financial terms of the agreement and elimination of false and deceptive advertisements; (ii) maintenance of sound credit standards; (iii) regulation of finance charges, including refinancing and delinquency charges; (iv) exclusion of unfair clauses from the agreement; (v) protection of the buyer's equity in the goods in case of repossession by the seller; and (vi) provisions for enforcing the Act.

Disclosure is necessary so that the

buyer may appreciate the financial commitments he is undertaking and know the difference between the cash price and the time price of the goods he is acquiring. A further object is to instruct him in the components of the time price, especially where, as in the case of an automobile purchase, it frequently includes, apart from the unpaid balance of the cash price and the finance charge, items such as registration charges, property damage insurance, and, increasingly, credit life insurance. Furthermore, since the advertisement frequently is the magnet which draws the buyer into the ship, a misleading or false advertisement can do much harm. Hence, for maximum effectiveness, the regulation of such advertisements should also be brought within the disclosure net.

Sound credit standards are needed because of the fact that excessive zeal by some retailers, and the attractions of being able to obtain immediate use of desirable goods with only a small down payment, may tempt buyers of modest means to overextend their financial resources. The social consequences in such cases can be very grave. Theoretically the financing agency's policy may be to insist on a downpayment and on the payment of subsequent instalments sufficiently high to ensure that the value of the goods will, during the life-time of the contract, exceed the unpaid balance of the time price, but competitive pressures may compel the financer to relax such sound credit standards. Moreover, the practice of traders granting over-generous trade-in allowances may substantially dilute the value of any

downpayment. For all these reasons the Legislature will have to consider whether the regulation of minimum downpayments and maximum maturity rates may not be necessary in the public interest.

Turning to finance charges, it is widely conceded that the average consumer is not rate conscious and that his principal interest is in the size of the downpayment and monthly instalments he will have to meet. Two consequences flow from these facts. First, there is very little rate competition among finance companies, and, secondly, some finance charges, especially in the field of used vehicles, are unconscionably high. The problem is accentuated by the practice of some car dealers "packing" their charges. There are two ways of coping with the problem, which preferably should be used together. The first is to regulate by law the maximum permissible charges, as is already done, for example, in the case of small loans. The other is to require every contract to state the finance charge both in money terms and as an effective rate of interest, so that the buyer may readily be able to compare the rates of different financial institutions. If the first method is used, some consideration will also have to be given to the question of regulating the commissions paid by finance companies to dealers, since these now comprise a very substantial part of the total finance charge in the case of automobile sales. Related to the question of finance charges is the right of the buyer to a proportionate rebate of the charge where he prepays or,

in the case of an acceleration clause, is forced to prepay the whole or part of the unpaid balance of the contract price. At common law he has no such right. The same problem arises if, as happens frequently, the contract is refinanced during its lifetime.

The interests of the consumer and the finance company are violently at odds over exclusionary or so called disclaimer clauses. The company, which regards itself for this purpose as essentially in the position of a lender of the purchase price of the goods, feels that it is entitled to be isolated from disputes between the buyer and the seller. To this end a triple-barrelled weapon is frequently used against the consumer. First, the agreement excludes all warranties and conditions.

Mr. Chairman, attached to my brief is a copy of a typical conditional sales contract currently in use; I think it is fair to say by all the companies in the sales finance field and if you will turn to page 2 of that agreement, which is really the reverse side of the original agreement, you will find that I have put a little pencil mark beside paragraph 5 and paragraph 6. That is right at the end of my brief. You will find that page 1 of the agreement is headed "Conditional Sales Contract". Now on page 2 of that agreement, paragraph 5, is the paragraph that contains what is generally referred to as an exclusionary or disclaimer clause. Now, paragraph 5 here reads as follows: "Purchaser acknowledges that

this agreement constitutes the entire contract. There are no representation, warranties or conditions expressed or implied, statutory or otherwise, other than as contained herein."

Perhaps I should add, Mr. Chairman, for the benefit of any members of the Committee who may not be lawyers that ordinarily, if a buyer purchases goods, the Sale of Goods Act implies in his favour a number of implied conditions of warranties regarding what we call the merchantability of the goods and their fitness for the purpose for which they are bought. Now the effect of this paragraph 5 is to try and exclude those implied conditions which are ordinarily implied in favour of the purchaser.

If I may now continue with page 4 of my brief, Mr. Chairman. I have so far ennumerated the first of three references that are used in these agreements to protect the finance company against buyer-dealer disputes.

The second means used is that the buyer is made to agree that any assignee of the agreement shall take it free of all defences. Now this clause, Mr. Chairman, is found in paragraph 6 of the assessment form of agreement, that is, immediately after the clause dealing with exclusionary clauses. The first part of that reads as follows: "Purchaser takes notice that this agreement, together with the vendor's title to property and ownership of said goods and said note (that refers to the promissory note) are to be forthwith assigned and negotiated by Vendor to

Industrial Acceptance Corporation Limited, and that said Corporation shall be entitled to all of the rights of Vendor free from all equities existing between Vendor and Purchaser."

Now, the practical effect of that clause, Mr. Chairman, is this; that the general rule of law which provides where a person assigns his right to a debt to a third person, that third person has no better rights against the debtor than the original creditor had. This is a dispute between the debtor and the creditor, say, regarding the condition of the goods, the debtor will be free to raise this defence in any claim by the assignee of that debt. Paragraph 6 attempts to eliminate this possibility. However, in Ontario, as in a number of other Provinces, this clause has been the subject of frequent litigation before the Courts and its present status is somewhat clouded at the moment.

Now the third weapon that is generally used, Mr. Chairman, to isolate the finance company from buyer-trader disputes is a promissory note, with the implications of a holder in due course status for any bona fide endorsee, which usually accompanies the agreement. The endorser of a promissory note, Mr. Chairman, is ordinarily entitled to sue on the note regardless of any disputes between the original parties to the note and this, of course, is the reason why finance companies do usually take a promissory note in addition to the assignment of the conditional sale agreement. Members of the Committee may perhaps

remember that two or three years ago a house improvement company in Ontario was going around offering to improve people's homes and then persuading the home owner to sign a promissory note for the cost of the job before the job had been done. Those notes were then assigned to various financial agencies who in due course called upon the house owners who honoured the promissory notes and when the house owner tried to raise the defence that the work in respect of which the note had been signed had never been done. Great difficulties arose on the part of the house owner because under the ordinary law of negotiable instruments this would not have been a defence against the bona fide endorsee of that note. So this is the practical significance of promissory notes in the consumer credit field.

So, Mr. Chairman, these are the three means that are generally used in practice by finance companies to isolate themselves from these dealer-buyer disputes.

Now the consumer interest, in my opinion, is not to be compelled to pay for goods which are faulty, or have been misrepresented, or perhaps have never even been delivered to him at all. While the common law, in some instances, has been able to save some of the rights which the buyer has thus unwittingly signed away, the protection is far from adequate or complete; consequently, once again, the legislature must intervene. The importance of this problem cannot be overemphasized.

Protection of the buyer's equity when

the seller repossesses the goods is historically the oldest problem and the one which has received the earliest statutory attention. Repossessions (including the voluntary return of goods) may represent as much as 10 per cent of the total number of contracts liquidated per annum in the case of used vehicles, and as much as 5 - 6 per cent in the case of new vehicles.

I might add, Mr. Chairman, these figures were given to me by a former President of the Federated Council of Sales Finance Companies. That the buyer in default should not summarily forfeit his equity is almost everywhere conceded but the extent to which it should be protected is susceptible to different answers. Some of the policy questions which arise are the following. Should the buyer, loke a mortgagor, simply have a right to redeem the goods on paying the unpaid balance of the purchase price, or should he have an opportunity to reinstate the agreement by paying the instalments actually in arrears, exclusive of any acceleration clause?

I might add, Mr. Chairman, if I remember correctly, in Ontario, in the cases of mortgages on real property, that right is expressly conferred on the mortgagor by the Court. However, there is no similar right, in Ontario, with respect to mortgages against goods.

Should the seller be required to obtain a court order before repossessing and, upon such an application being made, should the court be empowered to stay repossession proceedings upon such

terms as it sees fit? And again, should there be a compulsory resale in all cases and should the seller be entitled to claim any deficiency after a resale?

Finally, there is the question of the most effective method of enforcing the Act. The choice here lies between penal sanctions, civil penalties, and a licensing system, or all three. Weak sanctions do not deter and excessive penalties may deter too much; hence a well drafted act must show a proper sense of discrimination and adjust the sanctions in accordance with the gravity of the particular offence. With these preliminary remarks, I should now like to review the legislative history of the four countries which I have chosen for this purpose.

Turning first to Canada. Early conditional sellers found the common law greatly favoured their enterprise. On the one hand, by a conjunction of the principle that a person cannot transfer a better title to goods than he himself has and the rule that the passing of title may be postponed for as long as the parties may agree, they were able to maintain their proprietary position even though the buyer was left in possession of the goods. On the other hand, because in law the transaction was, and in Canada still is, only an executory agreement of sale, and not a chattel mortgage, they were able to avoid the registration requirements of the emerging bills of sale Acts as well as the fetters which equity places on a mortgagee seeking to foreclose. These advantages, however, did not survive for long. Between 1882 and 1907 all the

provinces and territories adopted some form of legislation requiring registration of the conditional sale agreement or the marking of the goods with the seller's name, and, except in the case of Manitoba, conferring upon the buyer a right to redeem following repossession by the seller. It was further provided that if the seller intended to look to the buyer for any deficiency after a resale he was to give him notice of his intention to sell, together with certain other specified details. This requirement was, and still is, strictly interpreted, and it was early held that imperfect complicance deprived the seller of the right to sue for any part of the deficiency. Consequently, since a technical error in the contents of the notice to be sent to the buyer is all too easy, the defaulting buyer often received, and still receives, a windfall that is as unexpected as it is unjust. Another laudable, but ineffectual, requirement of these early Acts was that the buyer was entitled to receive a copy of the contract within a specified time after its conclusion; but, since non-compliance only exposed the seller to a nominal fine, it could never have been of great practical importance.

Mr. Chairman, I am not aware of any case in which prosecution has ever been launched against the seller for failing to provide the buyer with a copy of the contract within the specified time.

These provisions were modified in only minor respects in later years; they were adopted almost verbatim in the first Uniform Conditional Sales

Act of 1922 and repeated in the subsequent revised uniform acts of 1947 and 1955; and they are in force today in most of the provinces. Although Ontario has never adopted any of the versions of the uniform act, the provisions in the Ontario Conditional Sales Act concerning the repossession and resale of goods are very similar to those in the uniform act.

While the draftsmen of these statutes deserve great credit for appreciating so early the need to shore up the unequal bargaining position of the buyer, it must also be admitted that the redemption and foreclosure provisions fall far short of what is required for the protection of the buyer. First, these provisions do not require the seller to give the buyer any warning before repossessing the goods. In practice, Mr. Chairman, the finance companies, too, usually give the buyer ample warning. But it is not a requirement that they are required to comply with by law.

Secondly, they do not entitle the buyer to reinstate the contract upon paying the amount actually in arrears before the goods were repossessed; and, thirdly, they do not require the seller to re-sell the goods for the benefit of the buyer, even though the buyer has a substantial equity in the goods.

To resume my narrative, the next development of consequence was in the limited but, for the provinces concerned, economically important field of farm implements. With respect to such chattels, the prarie provinces of Alberta, Saskatchewan, and Manitoba

enacted special legislation in 1913, 1915, and 1919. Much farm machinery which was being sold at the time was of an experimental character and not functioning satisfactorily, and farmers generally were being over-reached by harsh contractual provisions. These Farm Implements Acts were designed to remedy that situation. The Saskatchewan Act was, and still is, the most comprehensive of the three, and the ensuing remarks are accordingly based upon its provisions.

Every vendor of farm machinery must be licensed, and his books and premises may be inspected by inspectors appointed under the Act. Every contract is required to be in writing in one of the two forms prescribed by the statute, and no contract is binding upon the buyer until a copy of it has been delivered to him. The prescribed forms, in conjunction with several sections of the Act, set out the rights and duties of the parties, and may not be varied or excluded. In the case of new implements the seller is expressly required to warrant their fitness, and he is liable for his agent's representations. The manufacturer is also liable on the statutory warranties, even though he is not a party to the contract.

This I might add, Mr. Chairman; I think it is a unique provision in Canadian statute law and an interesting anticipation of current developments.

The Act contains specific provisions, in the case of "large implements", laying down the procedure for adjusting the parties' rights following repossession by the seller. Moreover, in all cases of

repossession and resale the buyer is entitled to any surplus and, it would seem, liable for any deficiency. Finally, the Act establishes an Agricultural Machinery Board which, together with the Agricultural Machinery Administration, a government agency, is responsible for administering the statute and issuing regulations under it.

Perhaps I may be permitted to add, Mr Chairman, that none of this legislation was political in character, certainly the Saskatchewan legislation much preceded the first CCM government in the province.

Even allowing for the fact that the Farm Implements Act was designed to meet a special situation, it is still a remarkable example of an early piece of legislation containing many of the features which competent observers today regard as essential for the safeguarding of consumer interests in instalment sales. It introduces a statutory form of agreement, thereby automatically eliminating the oppressive contractual provisions. It further regulates the parties' rights and duties - insofar as they are not already set forth in the statutory agreement - and in particular it prescribes when the seller may repossess and how he must proceed after repossession: thus the buyer's equity in the goods is carefully protected. Finally, to ensure that the statute is being observed, there are comprehensive licensing provisions with real bite in them.

Contemporaneous with the farm legislation was Alberta's decision to regulate the extra-

judicial seizure of goods, including goods repossessed under a conditional sale agreement. The original Act of 1914 empowered only a sheriff or other person authorized by him to seize such goods, and provided that after seizure the goods were not to be sold except upon the order of a judge "granted ... after consideration of all the facts and circumstances and upon such terms and conditions as to costs and otherwise as he shall determine." These provisions were completely revised in 1929, and the position is now as follows:

These provisions, Mr. Chairman, will be found in the Alberta extra-judicial Seizures Act usually referred to as the Seizures Act.

At the time of seizure the sheriff must leave with the debtor a "Notice of Seizure". The debtor can serve a notice of objection to the seizure within fourteen days, and if he does so the onus is cast upon the seller to apply to the court for an order authorizing the property's removal and sale. The court may deal with the application in a variety of ways, but from the buyer's point of view the most important one undoubtedly is the power to suspend any order for sale pending payment of the debt by such instalments or the performance of such other conditions as the court may determine. It may be noted that this provision fully anticipates the similar powers conferred upon the English county courts under section 12 of the English Hire-Purchase Act of 1938. If no notice of objection has been served, the seller is entitled to proceed with the seizure and sale, but he is required

to notify the buyer beforehand of the intended sale. Furthermore, if the buyer states in writing to the sheriff that the value of the goods exceeds the amount of the seller's claim, they may not be sold without the sheriff's consent. Finally, after the sale the seller must file a statutory declaration with the sheriff giving particulars of the amount realized and pay over the surplus, if any.

Until 1942, however, Alberta did not interfere with the seller's right to recover any deficiency following repossession and sale. An amendment to the Conditional Sales Act adopted in that year thereafter deprived him of the right by forcing him to elect between suing for the balance of the purchase price or repossessing. Why the amendment was introduced at this particular time is not clear. It appears, however, to have its emotional roots in a feeling fostered during the Depression that "it is not exactly fair that a man should be required to pay the full price for goods he doesn't get to keep." Of course there is a fallacy in this reasoning, Mr. Chairman, because that the seller repossesses are not, of course, new goods, they are used goods so that really the seller suing for deficiency gets no more ultimately than the purchase price of the goods.

Whatever the merits of this argument, it is significant that similar provisions have now been adopted in Quebec, Newfoundland, and the Northwest Territories. We now have four jurisdictions in Canada that compel the seller to elect between suing for the

price or repossessing the goods.

I must now return to Saskatchewan. This province, even more than Alberta, has seriously curtailed the seller's rights and correspondingly strengthened the buyer's position. The new movement -- not restricted to farm machinery -- began in 1933 with a provision in the Limitation of Civil Rights Act restricting the seller's rights to his lien on the goods; in other words, he cannot sue for the purchase price at all. This amendment was recommended by a Select Special Committee of the Saskatchewan legislature in 1932. In 1939 and 1940 amendments were introduced concerning implied warranties and conditions, and empowering the court, on the buyer's applicstion, to stay any intended repossession by the seller. These were no doubt inspired by the comparable provisions in the English Hire-Purchase Act, although the two are not identical. In particular, it should be noted that the power of the Saskatchewan courts to stay repossession proceedings is limited to specified items of goods; on the other hand, the buyer need not have paid a minimum amount before he can invoke the court's jurisdiction (as is the case in the English Act), nor is there any ceiling on the purchase price of the goods to which the sections apply. Further amendments making acceleration clauses substantially inoperative were adopted in 1958.

Thus it will be seen that the unconscionable seller (and, sometimes, the conscientious one, too) faces formidable hurdles in both Saskatchewan

and Alberta. There have been attempts to challenge the legislation on constitutional grounds, the argument being that it trenches upon the exclusive federal power to legislate on matters of banking and bills of exchange, but they have not succeeded.

I might add, Mr. Chairman, I have frequently inquired of finance companies and retail dealers operating in these Provinces whether this restrictive legislation has seriously affected the volume of sales in these provinces and they have always assured me that it hasn't. They don't like the legislation but on the other hand it doesn't seem to have materially affected credit sales in these provinces. Possibly the most important influence that it does have is to make retailers a little more careful before extending credit, knowing that they will have difficulty in suing for any deficiency, if indeed they have that right at all, they are going to be doubly careful before extending the credit.

The legislation which has been described thus far, with the exception of the farm implements Acts, deals primarily with enforcing the seller's rights and terminating the contract. Attempts to control the activities of finance companies and retailers more directly, and to regulate the financial terms of the contract, began to be enacted in other provinces from 1938 onwards. Nova Scotia introduced a somewhat ambiguous licensing statute in that year, but it does not appear to be of much importance at the present time. It was apparently adopted because of a number of pre-war

complaints about arbitrary repossession practices by some sellers. The Act requires every dealer engaging in conditional sales and every sales finance company to be licensed, and vests in the Minister of Municipal Affairs, who is the licensing authority, the right to cancel or suspend any license at any time "in his absolute discretion". He may also appoint inspectors to examine retailers' books. No licenses, however, have been refused, cancelled, or suspended since 1950. Newfoundland has also recently adopted a licensing statute, this was in 1961, Mr. Chairman, but its purpose appears to be to protect investors rather than consumers.

Of far greater interest as a precedent for possible future legislation is the federal Small Loans Act, which was adopted in 1939. Based on the sixth draft of a model act sponsored by the Russell Sage Foundation in the United States, it contains features which competent observers also believe necessary for the protection of the purchase-credit consumer. These are: (i) strict licensing requirements coupled with far-reaching duties and powers of inspection on the part of the Superintendent of Small Loans, and an obligation on every licensee to make annual returns; (ii) regulation of the maximum permissible rates of interest which, since 1956, have been set on a sliding scale and include every other possible charge, with the exception of credit life insurance; (iii) the borrower's right to pay off the loan at any time without bonus or extra charge, and the

requirement that the loan must be repayable at approximately monthly intervals; and, (iv) regulation of delinquency charges. Both the Act and its administration have been conspicuously successful, as may be seen from the admirable annual reports issued by the Superintendent of Small Loans and the apparent absence of any reported litigation involving small loans.

The federal statute may also have influenced the draftsmen of the Quebec Instalment Sales Act of 1947, which added Articles 1561a to 1561j to the Code Civil. Quebec too, as a civil law province, has long recognized conditional sales, but made no attempt to regulate them until this Act. The Act was apparently proleptic in character and was designed, on a provincial level, to control instalment sales in the interests of consumers of modest means following the contemporaneous repeal of the federal wartime price regulations. What is perhaps even more striking, in view of the statute's far-reaching restrictions, is the fact that the Quebec business community is said to have given the bill its full support.

Subject to two exceptions, the Quebec statute only applies to retail sales not exceeding eight hundred dollars. Also excluded are a wide range of goods, including motor vehicles. But within these limits the Act regulates instalment sales more comprehensively than either the Saskatchewan or the Alberta legislation. Thus it prescribes a minimum down-payment of fifteen per cent and a sliding scale of maximum maturity periods.

Deferred payments must of an equal amount, with the exception of the last one, which may be for a smaller amount, and the buyer is given a right of prepayment both as to single payments and of the whole unpaid balance. In such cases he is entitled to a rebate of nine per cent per annum of the instalment or balance which is prepaid. A maximum finance charge of 3/4 of 1 per cent only for each month of the duration of the agreement is permitted. There are compulsory disclosure requirements concerning the regular cash price, the time price, the down-payment, and the instalments, and the written contract as a whole must follow the form prescribed in a schedule to the Act, all changes or additions not compatible with the Act being declared null and void. As in the Alberta Act, so here, the seller is put to his election if the buyer is in default: He may either sue for the unpaid instalments or retake possession of the goods and retain any payments which have been made. If he elects the latter course the buyer is released from all further liability for the balance of the price, but he or his creditors may redeem the goods within twenty days of repossession. Non-compliance with the disclosure, down-payment, rate, rebate and form of contract requirements apparently deprives the seller of his title to the goods. It may be questioned, however, whether this sanction is as effective as the one more commonly found in the American statute, namely, depriving the seller of the right to recover any part of the finance charge.

Influenced by the Quebec precedent,

New Brunswick also tried a shortlived experiment in controlling the terms and duration of retail instalment sales. These provisions were introduced in 1949, and while they were in force called, like the Quebec statute, for a minimum down-payment of fifteen per cent and a maximum maturity rate of twenty-four months. Excluded again were a wide range of goods, but not motor vehicles. The restrictions were found to be difficult to administer and enforce, and they were accordingly repealed in 1959.

In conclusion, brief reference should also be made to the legislative attempts which have been made in Canada since the end of the war to compel disclosure of the finance charge in terms of a percentage rate. (I am intentionally avoiding the use of the term "interest rate", Mr. Chairman, for reasons which are explained in my Addendum). As I have already indicated, Quebec adopted disclosure requirements as early as 1947, but these provisions only require disclosure of the finance charge in dollars and cents. Since then Alberta and Manitoba have also adopted disclosure Acts, the first in 1954 and the second in 1962. The Alberta Act was amended last year and now requires the finance charge to be expressed as a percentage rate. However, this part of the amending Act has not yet come into force. The original Manitoba Act also contained similar provisions, but these were deleted in an amending Act of 1963 -- deleted, I understand, Mr. Chairman, because they were so vigorously opposed by the business community. A striking omission

in both Acts is that they do not require a copy of the agreement containing the prescribed particulars to be supplied to the buyer at any time. (The whole object of the disclosure requirement is that the buyer be given a copy of the agreement at the time he signs it.) The Committee is, of course, familiar with Senator Croll's Bill and its subsequent history, and I need not therefore enlarge on it.

From the foregoing review it will be seen that the existing conditional sales and retail instalment sales legislation in Canada is both varied and, in some respects, distinctive. Using as our yardstick the six heads enunciated at the beginning of this brief, the position with respect to each of them may be summarized as follows: Three provinces have disclosure requirements, but only one, Quebec, attempts to regulate minimum downpayments and maximum maturity rates directly. Alberta and Saskatchewan, however, in a very real, if heterodox, way do so indirectly, in so far as they eliminate the seller's right to sue for any deficiency after repossession. This factor is bound to make retailers more careful in extending credit. Quebec, again, is so far the only province which has shown any appreciation of the importance of prohibiting excessive finance charges; but in view of the limited coverage of the Quebec Act, the seemingly arbitrary way in which the maximum permissible rate has been arrived at, and the failure to relate it either to the amount financed or to the length of the contract, its provisions on this point are more important for the

principle they establish than for the manner in which they apply it. Its rebate provisions are significant for the same reason. Two provinces, Saskatchewan and Quebec, have made serious attempts to protect the buyer from oppressive contractual clauses, and the precedent they have established of permitting only a statutory form of agreement is most valuable, since it automatically solves the problem of disclaimer clauses.

I might add, Mr. Chairman, that the notion of a statutory form of agreement is not new in Canada. It was adopted, I believe, as early as the first world war, with respect to contracts of insurance. There it has worked, I think, very satisfactorily both from the point of view of the insured and the point of view of the insurer.

Neither province directly prohibits the taking of promissory notes, but this is the indirect effect of section 18 of the Saskatchewan Limitation of Civil Rights Act, as shown by Traders Finance Corp. v. Casselman, (1960), 22 D.L.R. (2d) 177 (Supreme Court of Canada). I might add, Mr. Chairman, the court there held that where a finance company knows it was given the respect to a Saskatchewan contract, the finance company could not sue on a promissory note. So it was restricted to the same remedies that the seller had under the Act.

However, must more attention deserves to be focused on the increasingly urgent problem of promissory notes and "cut-off" clauses.

All of the provinces have some pro-

visions protecting the buyer's equity, but those in force in the provinces other than Alberta, Saskatchewan, and Quebec have only a limited value. When the buyer cannot keep up his instalments, it is not likely that he will be able to raise the balance of the purchase price in order to redeem the goods after they have been repossessed. Hence the Saskatchewan and Quebec Acts are much more realistic in permitting the buyer to reinstate the agreement on simply paying the instalments which are in arrears. Best of all, however, are the powers of staying repossession proceedings and re-adjusting the time and amount of the payments which the Alberta and (though in an unduly restricted class of cases) the Saskatchewan provisions confer on the courts.

If, for the reason explained, the recent Newfoundland Act is ignored, Nova Scotia alone has licensing requirements, but here again their main value lies in the principle they establish. Experience under the Small Loans Act proves how effective such provisions are as a deterrent against unlawful practices and as a means of maintaining a high standard of conduct among licensees. A well drawn Act and the regular exercise of inspection powers are, however, essential prerequisites.

Three final points deserve brief mention. The first is that, of the three provinces with any considerable amount of consumer legislation, only the Quebec Act has a limited coverage. The Alberta and Saskatchewan provisions, with minor exceptions, apply to all instalment sales. This is in striking contrast

to the American retail instalment sales legislation which is usually confined either to motor vehicles, or to consumer goods, or to sales not above a certain price.

The reasoning behind this limited coverage is, of course, Mr. Chairman, that it is only the consumer -- that is the person who is not in business -- who is entitled to special protection.

The other point concerns the almost total absence of any protective legislation in the provinces other than Alberta, Saskatchewan, Quebec and Newfoundland. The omission is particularly striking in the case of Ontario, which is after all the Province with the highest volume of consumer credit in Canada.

Finally, it will be noted that almost all the legislation involves conditional sales and not other forms of consumer credit. This is readily explicable. Until recently, and with the exception of direct loans (which are of course governed by the federal Small Loans and Bank Acts), the bulk of consumer credit assumed the form of conditional sales. Moreover, it is in this area that the majority of problems arise. The amounts involved in the case of unsecured credit are usually much smaller and it is only where the debt is secured by some title-retaining device that foreclosure problems and deficiency claims arise. All forms of consumer credit, however, raise disclosure issues and the desirability of regulating finance charges, and future legislation must take this fact into consideration.

May I ask, Mr. Chairman, would you like

me to continue reading my brief?

THE CHAIRMAN: Well, it's entirely up to you, whichever you prefer.

MR. SEDGWICK: I have glanced over it and I certainly think the Committee would want to hear it and his Addendum. I think it answers many questions.

MR. ZIEGEL: I would be very happy to do that, Mr. Chairman.

Might I, before I move over to my Addendum -- that's on pages 28 to 29 -- I set forth a list of the current Canadian Provincial Statutes dealing with consumer credit. I thought the Committee would not wish me to quote actual sections of legislation to them, but if any of the Committee's staff would like to follow the matter up, I thought this table would facilitate matters.

MR. LAWRENCE: Inaudible.

THE CHAIRMAN: Does any member want to ask Mr. Ziegel any questions?

MR. LAWRENCE: I was wondering -- you didn't cover it -- and I was wondering if Saskatchewan had passed legislation on the practice which is growing here in Ontario, particularly in the north country, and that is the assignment of wages. You don't cover this.

MR. ZIEGEL: As far as I know it has not been done on any extensive scale so far, but I certainly agree with you that it is an important problem. I believe it has been dealt with in an increasing number of American jurisdictions.

MR. LAWRENCE: You mean prohibited?

MR. ZIEGE: Practically, yes.

MR. LAWRENCE: Is there any Canadian legislation prohibiting it, do you know?

MR. ZIEGEL: Is there not an Ontario Assignment of Wages Act?

MR. SEDGWICK: My recollection is yes.

MR. ZIEGEL: Well, apart from that I don't know of any other legislation. Certainly there is nothing in the federal Small Loans Act that prohibits this. I think the reason is that this is a fairly new phenomenon in Canada. It has been very common in the States for many years, therefore it attracted much earlier attention down there, than up here.

THE CHAIRMAN: Any other questions?

MR. SEDGWICK: I was just going to ask one question about the same thing, so I shall ask it now. My understanding from some inquiries I made in England is that that type of assignment is virtually unknown there and that also, and this is a matter that was raised here, we have had examples where the seller of an article --(rest of sentence inaudible). You don't deal with that at all, do you?

MR. ZIEGEL: I deal with it in connection with English legislation, Mr. Chairman. Perhaps I may briefly resume the English legislation --

MR. SEDGWICK: Well, I understood that it was not a practice --

MR. ZIEGEL: Not assignment of wages, no, but they have some difficulties with what, in the

trade, is referred to as add-on or tie-on agreements. That is dealt with in the 1938 Hire-Purchase Act which, in fact, prohibits such tie-in or add-on clauses. In other words, if you have paid for one article the title moves to you regardless of whether you purchase goods subsequently or not.

MR. SEDGWICK: Yes. And once, of course, you have acquired title, this as a hire-purchase system would require a completely different kind of deal in order to bring anything back in, wouldn't it?

MR. ZIEGEL: Well, you would need some sort of mortgage agreement -- but they are very unusual in England because their Bills of Sale legislation is certainly unpopular because of its very difficult formal requirements.

MR. LAWRENCE: I would like to have your views sometime -- I think this is especially in Ontario -- on how this form could be controlled as well -- taking the general assignment of wages. My information is it is growing here in Ontario.

MR. ZIEGEL: I entirely agree with you. I think the small loans companies in particular are increasingly going to it. If you want my personal emotional reaction, I might say that I dislike the practice intensely. I think its frequent result is to lead to a man's loss of his job.

MR. LAWRENCE: Very much so.

MR. ZIEGEL: If I may inject a purely personal tone -- I had occasion to visit a brewery up in Prince Albert last year and as I went through the

premises I couldn't help seeing a large notice on the employee's notice board which said the employees are advised that if they are served with any further assignment of wages or garnishee notices the employees unquestionably will be discharged. I mean, that's a very typical reaction of an employer, so I think such assignments are, from a social point of view, are very undesirable.

MR. LAWRENCE: The other question I wanted to ask you: Is the Quebec Act, in setting the maximum permissible rate -- has this ever been attacked?

MR. ZIEGEL: Not so far, no. Well, I think in the light of the Supreme Court decision in the Bothwick case, I think it must be held constitutional because from a point of law an add-on rate is not treated as interest. This is all doctrine of a time-price differential. You are merely setting a higher price for the privilege of being able to pay for the goods over a period of time rather than by cash. As I read the Supreme Court of Canada decision in the Bothwick case -- and there are many more decisions along the same line -- that is not regarded as interest for legal purposes.

MR. LAWRENCE: Your final comment was you mentioned that the Ontario Court had intervened in regard to the mortgage situation in allowing -- where there has not been a final order for foreclosure -- if they pay up the arrears. I think this is an amendment to the Mortgages Act. We passed it here about four years ago.

MR. ZIEGEL: Thank you very much.

MR. IRWIN: Mr. Chairman, another question along with Mr. Lawrence's -- it seems to me it has been suggested here before the Committee that there also is a growing practice in Ontario where people may be buying one article and in the process of that give a chattel mortgage on everything they own.

MR. SEDGWICK: That's what I had in mind.

MR. IRWIN: How is this to be covered or how can you--

MR. ZIEGEL: It hasn't been dealt with in any Canadian legislation so far. It is dealt with in many American State Acts. They prohibit it. As a matter of fact the Commercial Court, Article 9, has a clause in it which restricts mortgages granted by consumers to the goods actually purchased at the time or to goods acquired by the consumer within, I think, a 30 day period following the initial agreement. They have very much set their faces against these all-in mortgage agreements for a long time and I think that is the right approach.

MR. MACDONALD: Is there any apparent explanation for shying away from this in Canada?

MR. ZIEGEL: No, I think perhaps our companies haven't been quite as ruthless in exploiting every legal avenue open to them as companies elsewhere. I think it's fair to say that often companies behave quite reasonably -- there are some exceptions -- but I think by and large they are conscious of their public

image, I think they are increasingly conscious and especially the small loans companies because they are licensed. I think this is the great value of a licensing system, that you have some official sitting somewhere who knows what is going on so that he is the -- if the necessity should arise, he can take appropriate action. A licence system does not mean that you have a bureaucratic official sitting at your doorstep every week. It means nothing of the sort. It simply means that in extreme circumstances, I may say very rare circumstances, action can be taken. For example, as far as I am aware, no small loan licences have been cancelled against the wishes of a holder since the Act was adopted in 1939. On the other hand, what a licence system does do is that the kind of man who tends to deal in the margin between the legal and illegal spheres tends to shy away from a field where too much publicity is focused upon his activities. And of course applying for a licence does immediately expose him to a certain amount of scrutiny.

MR. LAWRENCE: A very able statement of why we need to licence used car dealers.

THE CHAIRMAN: Any other questions? Would you care to carry on?

MR. REILLY: Mr. Chairman, I'd like to hear the rest of the brief and if it is his intention to carry through, I'd rather --

THE CHAIRMAN: Yes, all right. Do you have something you wish to ask?

MR. REILLY: I'll wait until you conclude

the brief, if you are going to read it.

MR. ZIEGEL: Well, I was thinking about the time factor.

MR. REILLY: There is only ten pages, I think, as far as the United States and Canada is concerned --

MR. ZIEGEL: Very well, I'll start on page 16, Mr. Chairman.

The United States appears, on the whole, to have reacted more slowly than the Canadian provinces to the need for buyer protection in conditional sales; thus, at the time when the National Conference of Commissioners on Uniform Conditional Sales Act in 1918, only a handful of state acts safeguarded the buyer's equity in the goods after they had been repossessed. The American Uniform Act, however, was more solicitous of the buyer's rights than the Canadian Uniform Acts of 1922 and 1955. Like the Canadian acts, the American Act sought principally to protect the buyer by "sedulously" guarding his equity of redemption, but, unlike the Canadian Act, it did so much more carefully. The American act's superiority lay in that (i) it compelled the seller, after repossessing, to sell the goods for the buyer's benefit if the buyer had paid more than fifty per cent of the purchase price or if he demanded a resale, and (ii) it required any sale on behalf of the buyer to be made within thirty days of repossession or after receipt of the buyer's demand. If the time limit was not observed, the buyer was freed of all further obligations. Moreover, the act, as

judicially interpreted, entitled the buyer to re-instate the contract on paying the instalments in arrears without regard to any acceleration clause. This was a most important safeguard. Unfortunately, however, the American Act was caught between the end of one period in instalment selling and the beginning of another. It could not therefore anticipate the new problems which the era of mass-produced automobiles and the rise of the finance company would bring with them, and it was left to the later so-called retail instalment sales acts to deal with them. The uniform act has now been replaced by Article 9 of the Uniform Commercial Code, Part V of which re-enacts most of the above features in the earlier act.

I might add, in parenthesis, Mr. Chairman, the Bill which the Committee on Personal Property Security has been drafting has dealt with all of these provisions in Part V of the American Code.

The early years of the depression intensified the abuses which had begun to make their appearance even before then. Indiana and Wisconsin initiated the first of many official state inquiries into instalment sales practices, the first in 1934 and the second a year later. Both reports found many abuses and made recommendations for legislative action, which were substantially adopted in the Indiana and Wisconsin Acts of 1935. In the same year, a dozen other bills to regulate retail instalment sales were introduced in other states, but none survived. The Indiana and Wisconsin acts and most of the proposed bills had the following

features in common: (i) they required detailed disclosure in the contract of the agreement's financial terms; (ii) they either regulated, or authorized a government agency to regulate maximum permissible finance charges; (iii) they required the licensing of dealers and sales finance companies and they empowered designated agencies to investigate a licensee's business, to hold hearing, and to revoke licences for breaches of the act and other misdemeanors.

In spite of the continuing need for regulation, only five states had retail instalment sales legislation of any kind at the outbreak of the Second Wold War. By 1950, the number had grown to twelve, and in the next seven years was increased by four. 1957, however, was a watershed year: in that year no less than nine states and one territory enacted protective legislation for the first time. The numbers continued to grow: as of June, 1960 thirty-one states had a motor vehicles retail instalment sales law and eighteen an "all goods" law. Moreover, many of the earlier acts have been revised and enlarged.

I might add, what you do not have in many American states, Mr. Chairman, is -- you have two acts. One affords a minimum of protection to all buyers -- business buyers as well as consumers; the other an act specifically designed to protect consumers.

The common denominator of the postwar legislation, as of the bills and acts of 1935, is found in the compulsory disclosure requirements. Most of the acts also regulate finance charges (including refinancing

and delinquency charges) and the buyer's right to a rebate in the case of prepayment. Only fourteen, however, contain licensing provisions in 1958. Apart from these prominent landmarks, there exist wide differences in both the coverage and the contents of the acts.

The trend, however, appears to be in favour of comprehensive legislation, as may be seen from New York's example. New York adopted the uniform conditional act in 1922; thereafter, apart from some procedural changes, it added no further substantive legislation until 1941. In that year a limited "disclosure" bill was enacted. Abuses continued to abound, and in 1947 a Joint Legislative Committee on Instalment Financing was established to inquire into existing practices with a view to recommending appropriate remedial legislation. The Committee submitted an Interim Report in 1948 and its Final Report in 1949.

Legislative action of any kind, however, was postponed until 1956. In that year, a licensing law and a motor vehicles retail instalment sales act which included provisions for maximum finance charges were adopted. Both acts were repeatedly amended in subsequent years. In 1957, moreover, a general retail instalment sales act applicable to all consumer goods other than motor vehicles, and including all credit sales whether secured or not, was adopted. Governor Averell Harriman also appointed a Consumer Counsel in 1955 to guide the legislation. He further recommended the establishment of a permanent agency devoted to the

task of consumer education and protection.

I think I can leave out the rest of that page, Mr. Chairman, because it deals with bills under consideration in the United States rather than legislation which has already been established. I may perhaps be permitted to continue with England, page 20.

MR LAWRENCE: Before you leave that, has this Douglas Bill passed?

MR. ZIEGEL: Not so far. I think it overcame one important hurdle this year when the Senate decided to give it further consideration.

MR. LAWRENCE: So it isn't dead, eh?

MR. ZIEGEL: No, no, it's still an essay, as the Loyalists would say.

Consumer credit in the United Kingdom is now running at about one thousand million pounds annually. Almost all of this assumes the form of hire-purchase credit, with a small percentage being accounted for by credit sales, that is, outright sales in which the seller retains no title to the goods but the purchase price is payable in instalments over an agreed period. Revolving charge accounts and similar consumer credit schemes have so far not been introduced, and consumer loans by agencies other than banks appear to be of insignificant size.

Although a hire-purchase agreement differs in form from a conditional sale agreement, in substnace it is the same. The hire-purchase form of agreement was first adopted in the 1890's in order to circumvent certain restrictive provisions in the Factors

Act of 1889 and the Sale of Goods Act of 1893 (both of which acts have also been adopted in Ontario), and what makes it significant is the fact that this form of agreement is widely in use throughout the Commonwealth, and for the same reasons. In fact, Mr. Chairman, Canada and New Zealand are the only two countries I know of in the Commonwealth that use conditional sales agreements rather than purchase agreements.

In a hire-purchase agreement the "hirer" hires the goods from their owner and, apart from an initial payment, agrees to pay a prescribed rental so long as he retains the goods. He is free, however, to terminate the agreement at any time. When the rentals paid plus the initial payment reach a sum which, in a conditional sale agreement, would be equivalent to the "time-price" of the goods the hirer is entitled to exercise an option to purchase the goods outright for a nominal sum. To deter the hirer from terminating the agreement prematurely, a so-called "minimum payment" clause is usually inserted, which is designed to serve the same function as a deficiency clause in a conditional sale agreement, but in the past it has been much more arbitrarily drawn and has given rise to many abuses.

Apart from the special problems created by the anomalous nature of the hire-purchase agreement, the problems encountered in instalment sales in England have been substantially the same as in North America. Nevertheless, until 1938, when the first Hire-Purchase Act was adopted, hire-purchase agreements and credit sales

were not subject to any statutory regulation. The aim of the Act was to eliminate the following then major abuses in hire-purchase trading: (i) "the snatch back", that is, firms who were more interested in repossessing goods than in being paid for them; (ii) "linked-on" or "add-on" agreements; (iii) extortionate claims under the minimum payment clause; (iv) the failure of agreements to specify the cash price of the goods; and (v) exclusionary clauses precluding hirers from complaining about defective goods. The Act deals with these problems in the following manner. It protects the hirer's "equity" in the goods by requiring the owner to apply to the court for leave to repossess the goods where more than one-third of the hire-purchase price has been paid. Upon such an application the court is given a discretion to grant the order without reservation, or to allow it and postpone its operation upon terms, the terms being that the hirer will pay the balance of the hire-purchase price at such times and in such amounts as the court thinks just having regard to the means of the hirer. As a further alternative, an order may be made for the specific delivery of a part of the goods to the owner and the transfer to the hirer of the owner's title to the remainder of the goods. In practice it is an order of the second kind which is usually made. Thus the English court, like the Alberta court, is given power to adjust the financial terms of the agreement -- a most important power where the hirer has fallen upon hard times or where the court feels that the vendor has behaved unconscionably. "Add-on" agreements were made

largely ineffective, and the injustices of the minimum payment clause were partially, and somewhat crudely, reduced by the provision that, where the hirer has voluntarily terminated the agreement, the owner is only entitled to recover the difference between one-half of the hire-purchase price and the sums already paid. Mandatory disclosure requirements, along familiar North American lines, were designed to eliminate the third abuse, while exclusionary clauses involving warranties and conditions are outlawed for all practical purposes by section 12 of the Act.

I might add a word on this problem of exclusionary clauses, Mr. Chairman. Personally, I see much exercise over them. It seems to me that finance companies who deal with reputable dealers have nothing to fear from statutory provisions that outlaw such clauses because if a suit does arise between the buyer and seller -- they don't arise frequently where you are dealing with a reputable company -- then the finance company can always go to the retailer to take the contract back and adjust his differences with the buyer. I think the real effect of such legislation dealing with exclusionary clauses is to make finance companies more careful about the dealers with whom they do business.

Since 1938 three further acts have been added to the statute book. We are still dealing with England. They are the Hire-Purchase Act of 1954, the Advertisements (Hire-Purchase) Act, 1957 and the Hire-Purchase Act of 1964. That was passed this summer

and comes in force the 1st of January, 1965.

The first of these measures raised the financial ceiling of the 1938 Act to 1,000 pounds in the case of livestock and 300 pounds in all other cases. The 1957 Act was passed with a view to removing widespread abuses in advertising practices -- the type of advertisement that said, for example, "Yours for only 1 pound down", without specifying the cash price, the hire-purchase price, or the number of weekly or monthly instalments. The Act, as amended by the 1964 Act, now requires any advertisement which purports to contain details of payments in respect of any goods to include the following information: (i) the amount of the deposit, or a statement that no deposit is payable; (ii) the amount of each instalment directly expressed; (iii) the total number of instalments payable; (iv) the length of the period in respect of which each instalment is payable; (v) the number of instalments which are payable before delivery of the goods; and (vi) the cash price and the hire-purchase price of the goods. Moreover, no undue prominence may be given to any part of the required information as compared to any other part. This last provision was of course designed to prevent a trader from emphasizing the sugar coating at the expense of the underlying pill.

The Hire-Purchase Act, 1964, was introduced with a view to implementing the recommendations concerning consumer credit contained in the Molony Report on Consumer Protection which was published in 1962. The Act is long and complex, and many of its

provisions merely amend the earlier acts. Among the new provisions the following may be mentioned. First, the financial ceiling of the 1938 Act has now been raised to 2,000 pounds for all types of goods, but for the first time incorporated companies are excluded entirely from the protection of the act. Secondly, the hirer or buyer is now entitled to receive immediately a copy of any agreement or offer signed by him. Previously the dealer had seven days within which to provide the buyer with a copy. Thirdly, where a sale or hire-purchase agreement is concluded or an offer is signed by a hirer or buyer at a place other than trade premises the hirer or buyer is entitled to cancel the agreement at any time up to four days following the service upon him of a statutory copy of the agreement. This provision was designed to deal with the abuses of door-to-door sales. (In passing it may be noted, Mr. Chairman, that Saskatchewan also has a Commercial Agents Act which provides for the licensing of itinerant salesmen, but does not confer any general right of cancellation on the householder.)

Finally, the Act seeks to protect private purchasers of vehicles which are subject to undisclosed hire-purchase agreements by providing that the hirer under such an agreement shall be deemed to be the owner of the vehicle for the purpose of passing a good titel to the private purchaser. The United Kingdom has no system of public registration for hire-purchase agreements, and the resultant frequency with which unsuspective persons found themselves purchasing encumbered

automobiles had been causing grave concern. I mention this feature of the 1964 Act because I know that the Ontario position is equally unsatisfactory.

It will be noted from the foregoing review that finance charges are not regulated in the United Kingdom, nor have any attempts been made so far to compel disclosure of the charge in terms of a percentage rate. These omissions are mainly due to the fact that there has been very little discussion about these problems so far. Dealers' commissions have, however, attracted a great deal of criticism. Minimum down-payments and maximum maturity periods have been regulated on and off since the end of the war under wartime emergency powers, but for economic, not social reasons.

In conclusion, I should also say a word about the Consumers Council which was established in March, 1963, pursuant to another recommendation of the Molony Committee. The Council consists of a chairman and ten members and is supported by a full-time director and a staff of thirty employees, which includes a lawyer and an economist. The Council received a grant-in-aid of 60,000 pounds in 1963/4 and 125,000 pounds for the current fiscal year. The terms of reference of the Council are wide, and during its first year of operations the Council has explored and recommended legislative action on a wide variety of consumer problems. (I have supplied Mr. Harcourt with a copy of the Council's first annual report. I believe he has run off some Xerox copies so the Committee might

take a look at it.) I mention all this because it has for some time now become apparent that consumer affairs can no longer be dealt with in an ad hoc and fragmentary fashion but require the same continuous attention as any other activity of major public concern.

Australia is very short. Perhaps I may just read the next page.

Consumer credit plays an important part in the Australian economy, and now amounts annually to well over a billion dollars. As in the case of the United Kingdom, most of this assumes the form of hire-purchase credit.

Hire-purchase legislation in the Commonwealth began in 1931, and by 1959 all the states had some kind of act on the subject. The measures, however, differed widely in content. In 1959, representatives of the states drafted a uniform hire-purchase bill, and this has now been enacted in all the states. The bill is comprehensive in character and has provisions on each of the six heads of subject matter adumbrated at the beginning of this brief. Several of the Australian provisions deserve special mention:

(a) the Bill does not impose maximum finance charges (although some of the states have separate provisions to this effect) but empowers a court to re-open a transaction at any time and to reduce any finance charge which it deems unconscionably high. The effect of this provision is to extend to consumer sales the powers which the Australian courts (and the Ontario courts, too, under the Ontario Unconscionable Transactions

Relief Act) already possessed with respect to direct loans. (b) The Bill entitles the hirer to a rebate in the finance charge both where he voluntarily prepays the outstanding balance and where the owner terminates the contract. (c) The Bill prohibits the payment of commissions to dealers, save where the dealer guarantees performance of the hirer's obligations. In such an event, the commission may not exceed 10 per cent of the finance charge.

I wonder, Mr. Chairman, if I might now proceed with my Addendum? Starting at page 31 of the brief.

Fair-minded persons will agree that the consumer should be in a position to compare the finance charges of different retail outlets and financial agencies, just as he can compare the price of any other commodity, and that the simplest -- if not, indeed, the only effective -- way in which this end can be accomplished is to require the finance charge to be stated in terms of a percentage rate. If these premises are granted, then convincing reasons would have to be shown why such a requirement should not be adopted by the legislature. Several such reasons have been advanced, and I should like to comment on them briefly. Before embarking on this task, however, a number of preliminary comments may be helpful.

<u>First</u>, the disclosure problem is growing in urgency because of the increasing number of outlets offering consumer credit and the lack of uniformity among them in the statement of their financial

charges. Thus if the consumer wishes to finance the acquisition of an automobile, he can either borrow the money from a bank, a small loans company or a credit union, or he can purchase the car on conditional sales terms from an automobile dealer. But each of these outlets states its finance charge in a different way, so that the consumer has no ready way of ascertaining which of them offers him the cheapest form of credit. Moreover, units of the same type of financial agency may state their charge in different ways. The chartered banks, for example, state their charge for consumer loans in four different ways, namely, as an "add-on" charge, as a "discount" charge, as a simple rate of interest coupled with certain additional charges, and as a simple rate of interest with the loan being repayable by the "Morris Plan" method. (I appreciate, of course, that banks and small loan companies are subject to federal control, and this indicates the desirability of federal-provincial cooperation in this area).

Secondly, it is quite understandable that the business community should be opposed to such a disclosure law, nor are some of their arguments devoid of merit. Most laws which change the status quo are opposed by a section of the community. But this, of course, is not the end of the matter, for if it were no legislation which did not win unanimous approval could ever be adopted. There is here a conflict of interests (though I think the conflict is more apparent than real) between two important sectors of the community, and as is

so often the case in such conflicts the legislature has to make a judgment as to which of the two interests is the more important -- the right of the consumer to know or the desirability of not complicating commercial transactions.

Thirdly, voluntary disclosure of the percentage rate is already made in some highly significant cases, namely, by small loans companies in the case of small loans and by such large retail chain stores as the T. Eaton Co. in respect of revolving charge accounts.

Mr. Chairman, the members of the Committee will find some copies of these agreements at the end of my brief where I reproduce the typical agreement used by the Household Finance Corporation for its small loans. Household Finance is, of course, the largest small loans company in Canada by far. I think the annual volume of their business is something like 400 million dollars. Members of the Committee will note, Mr. Chairman, that right in the middle of the agreement is set forth the charge as in terms of a percentage. 2% per month for any part of the unpaid principal balance not exceeding $300.00, 1% per month or 12% per annum for any part exceeding $300.00 and 1/2 of 1% or 6% annually on any remainder thereof. Then turning to the Eaton's revolving credit agreement, members of the Committee will note in paragraph 2 it sets out the percentage charge -- paragraph 2 of the Eaton agreement -- "the buyer agrees that the Company shall debit my said account with a monthly service charge

until further notice to me, of 1½% of the balance at the end of the previous month.

MR. LAWRENCE: May I ask, is this in the form of provincial legislation?

MR. ZIEGEL: No, sir, it is not required by any Act; that is true also of the Small Loans Act, so far as I -- I checked the Small Loans Act again because I notice that in the Committee's Interim Report to the Legislature that some reference to disclosure requirements in the Small Loans Act was made. But I checked the Act again, as well as the regulations made under the Act, and I could find no provision in the Small Loans Act which requires a statement of the charge in percentage terms.

MR. MACDONALD: Well I remember one of them, for example, went on a certain charge at the end of each month, a dollar charge, and then at a certain level they switch to a percentage charge.

MR. SEDGWICK: That was Eaton's.

MR. ZIEGEL: But I might add that the T. Eaton Company is not the only one that operates on a percentage basis. I understand the Hudson's Bay Company does.

MR. SEDGWICK: Yes, they said so to us. They operate --

MR. ZIEGEL: The only thing is the agreements they issue don't actually state a fixed percentage charge, they simply say the buyer agrees to pay such a percentage charge which shall be fixed by the Company from time to time.

MR. MACDONALD: I'm curious to know why a Company like Eaton's is operating all across the country with variations that aren't required by law. This must be an unnecessary administrative complication.

MR. ZIEGEL: I should have thought so. It may be psychological. I'm merely speculating.

MR. IRWIN: Mr. Chairman, perhaps in private session with the Committee I can report upon my meetings with the Eaton Company which might clarify some of these points.

THE CHAIRMAN: Perhaps on Wednesday we can do that.

MR. ZIEGEL: If I might continue now, Mr. Chairman. I'm in the middle of my second paragraph, page 32.

It is not correct, therefore, to suggest, as is often done, that the disclosure principle is a novel one in Canada. It is true that the small loans contracts state the finance charge in terms of a "step" rate, but this appears to be so because the Small Loans Act itself sets the maximum permissible rates in this way.

Finally, in my opinion, full disclosure of the financial aspects of a consumer credit transaction will enhance the reputation of consumer credit agencies and increase public confidence in their integrity. Indirectly, therefore, the proposed law is itself in the best interests of the business community. This has been the experience in other fields, such as securities and company law legislation, where legal reforms were at

first vigorously opposed but have now been accepted as normal and necessary measures for the protection of the public.

I should now like to deal with the objections which have been raised against the proposed law:

(a) That it is misleading to describe a finance or carrying charge as "interest".

This appears to be largely a matter of semantics. How the percentage rate is described is not important. What is important is that the finance charge be expressed as a percentage on the declining unpaid balance of the debt. The problem of how to describe the percentage rate has created no difficulties for such companies as the Household Finance Corporation or the T. Eaton Co. The small loans contract of the former describes the percentage charge as representing "the total cost of the loan".

I'd like to say a little bit more about this, Mr. Chairman. What they call the "agreed rate of cost of loan, including interest".

The revolving credit plan agreement of the T. Eaton Company provides"that the company shall debit my account with a monthly service charge, until further notice to me, of 1-1/2% of the balance at the end of the previous month".

Both descriptions are equally satisfactory.

(b) That where credit is being extended for only a small amount, the percentage rate will be high

> and the consumer will draw erroneous conclusions as to the profit made by the credit agency.

The answer to this argument is twofold. In the first place, the apprehensions as to the consumer's reaction are probably unfounded. Neither the small loan companies or the large retail chain stores have suffered a loss of business as a result of stating their charges in percentage terms. Secondly, it is a question of educating the consumer. He should learn to appreciate (if he does not already do so) that consumer credit is considerably more expensive than other forms of credit. To the extent that disclosure of the percentage rate will bring home to the consumer this fact, this can only be regarded as a gain.

> (c) That there are various ways of calculating the percentage rate, and that each of them gives a different result.

The legislation can indicate which of the several available formulae shall be used. The Alberta Act, for example, empowers the Lieutenant Governor in Council to prescribe the appropriate formula.

It seems to me, Mr. Chairman, this is probably one of the weakest objections that is generally raised against a disclosure law.

> (d) That it would take a small retailer a disproportionate amount of time to work out the correct percentage in each case, and that he could easily make a mistake.

Now my answer to this objection is, tables of calculation are now generally in use by retailers and could just as easily be prepared for use under the new legislation.

The legislation could also provide that any percentage figure taken from a table whose contents have been approved by the Superintendent of Insurance or some other designated official, shall be deemed to be correct and in conformity with the Act. The Act could further provide, as does the English legislation with respect to breaches under the Hire-Purchase Acts, that where the breach is inadvertent and the consumer has not been prejudiced by it, the court may waive an otherwise applicable penalty.

> (e) That it would encourage retailers to bury some of the cost of credit in the cash price of the goods, so as to show a more favourable percentage figure.

I might add this is an objection which has only been raised fairly late in the day, Mr. Chairman. I think the gentleman who first raised this particular objection was Professor Johnston in his monograph on the disclosure problem. I think if you examine all the briefs that were filed with the Statutes Committee down in the States and the Kroll Committee up here, none of them refer to this as an objection. It seems to me it is a bit of an afterthought.

The dangers of this happening on any extensive scale are entirely a matter of speculation. In any event the device would only be successful if all the merchants in a given trade followed suit. If they did not, consumers would notice the difference in cash price and favour the merchant with the lower price with their custom. The argument is also revealing because it tacitly admits that under the existing methods of

stating finance charges, the consumer cannot readily compare one finance charge with another. The reasoning which underlies this objection is also inconsistent with objection (f) below.

(f) That the consumer is not rate conscious.

This is undoubtedly true of a substantial number of consumers (though by no means all, as the increasing resort to bank credit shows), but the conclusion which the opponents to the disclosure law seek to draw from the premise does not follow. The consumer is not rate conscious because he has not learned to appreciate the importance of the subject and because the present diversity of methods in stating finance charges effectively deters him from trying to make comparisons. Most consumers also sign contracts without reading or understanding their contents, yet one would not argue that this is any justification for society acquiescing in the presence of unfair clauses in such contracts.

(g) That it is impossible to calculate the percentage rate in the case of revolving charge accounts where the amount outstanding at any particular time is unpredictable and may fluctuate from month to month.

Two systems of calculating the charges on such accounts appear to be in use at the present time. The large retail stores, such as the T. Eaton Co. and the Hudson's Bay Co., apply a uniform rate of charge, regardless of the amount outstanding at any time. They obviously create no problem. Other stores, on the other hand, state their carrying charges in dollars and cents and the

charge does not bear a constant ratio to the amount outstanding. This method does create a problem for the legislature. The problem could, however, be resolved by permitting such stores to state the percentage rate in terms of a monthly rate of the amount outstanding at the beginning of each preceding month, calculated to the nearest 1/4 of 1%. The stores which presently use the second method would of course always be free to adopt a uniform percentage rate. (In passing, I may point out that I understand from the credit managers of two very large stores which already use the percentage method that it takes their staff only a few hours each month to make the necessary calculations. The use of modern calculating machines apparently reduces the work almost to a formality).

That, Mr. Chairman, concludes the formal presentation of my brief. I would be very glad to answer any questions.

THE CHAIRMAN: Before we have any questions we will take a five minute recess and then we will resume with the questions.

SHORT RECESS.

Professor Ziegel has concluded his formal brief and we will now proceed with any questions members of the Committee or Mr. Sedgwick and Mr. Irwin may have. Starting with Mr. Sedgwick --

MR. SEDGWICK: Mr. Chairman and Mr. Ziegel, I am not competent to ask any critical questions about your brief, but if I may speak very personally I think it is the most useful and most interesting brief that has been presented to this Committee. It is

the most useful one that I have heard. I just have one comment and I make it in case any members of the Committee wanted to check with the English legislation on page 22 where you speak of section 12 of the English Act, as I know you know, it is section 8 of the 1938 Act as amended by section 12 of the 1964 Act which, I believe, doesn't come into force until January of 1965, is that not correct?

MR. ZIEGEL: That's correct.

MR. SEDGWICK: Yes, and I just mention this in passing -- at the bottom of page 23 where you speak of disclosure in terms of a percentage rate, when I was in England I had an interesting chat with Mr. Molony, the author of the Molony Report and apparently they did discuss and consider it, but they didn't adopt anything, I assume because there was opposition from finance company interests; it has been considered though nothing is reflected in the Molony Report or in the drafted statute.

I have nothing else to say, sir, except to repeat that I think it is one of the most studious briefs that has been presented to this Committee.

MR. IRWIN: Mr. Chairman, I guess the first thing I would like to say is welcome, Mr. Ziegel, because he is the first friend I have had in this Committee.

On July the 29th I made a statement to the Committee after some study arguing for statement of charges as a percentage rate and on September the 14th I prepared this memorandum which I have filed with

the Committee today. So all I can say is that I heartily agree with everything you have said in these statements.

There is one thing, though, it has been brought out that the T. Eaton Company in Ontario does not apparently follow the practice of the T. Eaton Company in Saskatchewan. I have had some private meetings with the Company following their appearance here and many of the apparent difficulties and objections that appear on the surface are essentially solvable. I can't say any more than that right now.

The other comment I would make -- on page 34 of the Addendum, I believe there are some difficulties, very minor ones, about causing lenders to calculate and declare a rate of interest and they are mainly arithmetic. Some of the comments that have been made before the Committee in regard to the possible inaccuracies of the calculations, you find, on analysis, that they are talking about inaccuracies running to the seventh or eighth place of decimals. Now if you are going to be that refined about the whole thing then what they say is true. But in my study of the matter, I have made the assumption that a tolerance for error of 1/8th of 1% would be accepted and if you do that you are working to within one point of decimals and I should think if that degree of tolerance were permitted, accuracy could be obtained. This is just an alternative suggestion for the way you have treated that problem. I'm basically

for it where the courts recognize a margin of error.

On page 35 -- I don't wish to protest anything -- I think the revolving credit problem is perhaps greater than you indicate here. The major problem, even where they are using a percentage rate, on the previous month's balance according to your submission or your illustration of the revolving credit plan, it says, item 2, "that the Company shall debit my said account with a monthly service charge, until further notice to me, of 1½% of the balance at the end of the previous month". I have found, in actual fact, that this method nonetheless can result in significantly different effective rates than the monthly rate charge. It may be necessary to adopt a somewhat more practical approach dealing with revolving credit than with all other forms of lending of any type. It isn't quite as easy, except on page 36, where you refer to the use of modern calculating machines; if -- and this is quite a distinct possibility within a reasonable length of time -- say two years -- that if the revolving credit accounts were handled by an electronic computer, that in fact the actual monthly stated rate could be calculated from day to day and the presently existing wide fluctuations in the effective rate due to the initiative exercisedby the buyer -- that is, he can charge what he wants when he wants and pay what he wants when he wants -- the buyer, having this initiative can himself write his own contract and sometimes very adversely to themselves as far as the effective rate is

concerned. But until the advent of electronic computers, even with the use of the most sophisticated electric equipment or machines, it would place the burden, I think, on the retailer to make exact calculations with daily changes in the accounts. So there is a bit of a problem there. But with regard to everything else I welcome your analysis of the thing. Because it is so close to my own I want to emphasize it was made entirely without me.

MR. MACDONALD: Can we have Mr. Ziegel's comments on the revolving account?

MR. ZIEGEL: Yes. Well, let me say at this moment, Mr. Chairman -- I'm not, of course, a mathematician as far as difficulty is concerned, and I appreciate also, of course, there are some technical problems that have to be ironed out, as Mr. Irwin has mentioned, once the legislation has been agreed to in principle that a disclosure law should be adopted. This doesn't frighten me at all. It seems to me that once this decision has been accepted in principle to adopt a disclosure law, then you get together and agree on the precise technical formulation for the law. They could agree on the precise formula to use, they could agree on whether tables can be given recognition, they could agree also on other ways in which the retailer's work could be reduced to a minimum.

As far as the revolving credit problem is concerned I must confess I didn't entirely follow Mr. Irwin on the difference between the monthly

percentage charge and the effective rate. I appreciate, of course, that the consumer is entitled to make payments at any time and that insofar as a percentage charge is concerned it is not the same thing as the effective charge. This, it seems to me, is a good example of where the piece of legislation has to be practical and realistic. We are not aiming for the nth degree of mathematical accuracy. We are working for a workable system, and I think if the consumer is informed that on the assumption that a given amount outstanding for a whole month then the rate of interest is so much, that is, I think, as much as the consumer wants and that, I think, is as much as he needs.

Might I add also this, that in the whole spectrum of the disclosure problem the revolving charge problem looms very small. After all, the average amount outstanding in a revolving charge is perhaps $100.00 with a maximum of about $200.00. This doesn't create anything like the problems of the purchase of a car on which the outstanding amount may be as much as $2,000.00 and repayable over a period as long as 36 months. So the only reason why I personally am concerned at all as to whether these disclosure requirements apply to revolving credit accounts is to obtain some sort of consistency. I wouldn't like any part of the commercial community to feel that they are being discriminated against as compared to any other part of the financial community.

MR. IRWIN: The only point, Mr. Ziegel,

-- and it is a technical and mathematical problem -- it's just that the statement of disclosure of the rate in the case of revolving credit would have to be a qualified statement that this would not apply to any other form of lending.

MR. ZIEGEL: I think that would be quite in order. After all we are all acquainted with legislation where broad principles are laid down and then qualified to take account of special circumstances. This is not a new problem.

MR. IRWIN: There is just one other area of slight disagreement on my part, Mr. Ziegel. I'm not quarreling with you because 95% of your brief is so much in line with my own views on the thing.

In paragraph 23 -- you don't deal at great length with it, but the problem of dealer's commissions -- just to maybe get a reaction -- in business as a public accountant I have a number of clients who enjoy this dealer's commission and oddly enough I can't see anything wrong with it. I suppose the objection to a dealer's commission is that the consumer is paying in the finance charge someone and somebody else is getting the benefit of it, of which the borrower is not aware. And I suppose the inference could be made that if that other person weren't getting a cut the charges could be less. But I feel that if we got to the point of disclosing to the borrower what he was paying then he makes his decision in relation to that statement and what happens to the cut to the dealer is no concern of his. Would

you have any comment on that?

MR. ZIEGEL: Yes, indeed. I am much in sympathy with much of what you have said, Mr. Irwin. I feel myself that either you have a disclosure law or a maximum charge law and then it is a matter of internal organization how the finance company chooses to allocate that finance charge between itself and the dealer. This is not to say, mind you, that I think payment of high commissions to dealers is a good thing. While I do feel -- provided you adopt one of these two measures and preferably both -- the consumer is getting all the protection he needs and thereafter competitive forces will take care of the commission problem itself as, in fact, it has to some extent already because the competitive entrance of the banks in this field has led several of the major finance companies to reduce very substantially the commissions paid to dealers. This is a direct effect, I think, of the competitive force of bank lending. I would expect this development to increase in the future.

THE CHAIRMAN: Mr. Reilly, I believe you have to leave early --

MR. REILLY: Yes, thank you very much, Mr. Chairman. In congratulating Professor Ziegel in his presentation, I don't want him to misinterpret my congratulations as complete agreement with everything he says. (Laughter)

On page 2, Professor, in the middle of the page, "regulation of such advertisements should also be brought within the disclosure net".

Would the suggestion you have in mind be along the same lines of the 1957 Act in England, as you pointed out on page 22?

MR. ZIEGEL: Yes, sir.

MR. REILLY: That would be the suggestion you might have?

MR. ZIEGEL: Yes. May I say that having spent considerable time on and off in England, the 1957 Act seems to work very well. The importance of any legislation in this field is that it treats all phases of this area uniformly. This is, of course, what the Act does, and I think when a merchant feels he is in exactly the same boat as any other merchant, then he has fewer complaints. The difficulties that arise, have arisen in the past, is when one merchant adopts a practice that other merchants don't think too highly of but they follow simply for competitive reasons. This is why I think the 1957 British Act is a good Act. It seems to work extremely well.

May I add, of course, the merchant is not obliged to disclose the details of the time price if he doesn't want to. He could, for example, say in his advertisement: "Hire-purchase terms available", and that would be quite proper. But what he may not do under the Act, he cannot say, for example, "Only ten bucks down" and omit details as to the number of payments and the size of the instalments. This is what you might call a rather misleading advertisement and you may not do it.

MR. REILLY: On page 4, Professor

Ziegel, you refer to repossessions, and just so that I will understand, what jurisdiction are you referring to with this 10% -- is that in Canada?

MR. ZIEGEL: Yes. For automobiles.

MR. REILLY: That's across Canada?

MR. ZIEGEL: Well, as I have intimated at the time I read this passage, these figures were given to me three years ago by the then President of the Federated Council of Sales Finance Companies. One of the difficulties, Mr. Chairman, of using statistics in this field is that there are no official statistics and you can only rely on evidence given you by officials in the industry. They are only estimates and sometimes they may be fairly speculative. This is an unfortunate fact and maybe some agency will undertake a full-scale investigation of the fiscal aspect of the industry.

MR. REILLY: One question on page 8, Professor Ziegel. You were referring to the prairie provinces and the Farm Implements Act. You made an observation to the effect that their licensing has real bite in their licensing requirements. What way are they different from other jurisdictions?

MR. ZIEGEL: I was referring to this, that there is a governmental agency in charge of the enforcing of these Acts and the governmental agency appears to be doing their job. It is not inconceivable, it sometimes happens, you have licensing provisions but there is no government official charged with ensuring that licensees observe the Act. In other words,

the Act, for all intents and purposes, becomes a dead letter because, as experienced in the securities field -- I don't think it's a great secret -- that there have been problems in the past where prospectuses have been issued that should never have been issued and they manage to get through because the Securities Commission in that particular Province was not strong enough or perhaps wasn't quite on the ball. This is why I think it is important that if you do adopt licensing provisions that you have departments that are adequately staffed and adequately financed to do the job, otherwise it is not worth bothering with licensing provisions.

MR. REILLY: So that actually it's a question of enforcement to which you refer?

MR. ZIEGEL: Yes.

MR. REILLY: What is the provision you were thinking about as far as Newfoundland is concerned -- you referred to their licensing statute there, which appears to protect the investor rather than the consumer?

MR. ZIEGEL: Well simply this, that as you know some of the Provinces have been concerned about a number of finance companies that have solicited deposits from the public and then have become insolvent. Now Ontario dealt with the problem by adopting a Depositor's Act, as they did in England too, and I think that Newfoundland's answer to this problem was simply by requiring the licensing of these companies and also requiring them to file an annual balance sheet

with the appointed official so that he could satisfy himself that the companies were in a solvent condition.

MR. REILLY: A final question, Mr. Ziegel, in connection with the recommendation of the United States officials that there be a permanent agency -- what is the status of this recommendation now? This would be a permanent agency perhaps to consider consumer credit --

MR. ZIEGEL: Well, are you referring to the federal level or the state level?

MR. REILLY: I am referring -- on page 19 you say: "He further recommended the establishment of a permanent agency...."

MR. ZIEGEL: That was a recommendation of Governor Harriman. In fact a Consumer Council was appointed and operated for a number of years. The last I heard of it her work was taken over by one of the existing government departments, I suspect it may have been for internal reasons. States such as California and Minnesota do have a full-time Consumer Council whose job it is to acquaint themselves with consumer problems, be of assistance to existing government departments. The late President Kennedy also set up an Advisory Council in 1962 which was, however, not a full-time body. I believe they still exist and I imagine it was this American initiative that persuaded the federal government to adopt its Advisory Council this summer. I think the thing about an Advisory Council is it operates in too perfunctory a manner. You must have at least one or two permanent

officials whose job it is to concentrate on this one area. Otherwise I think it becomes a little too diluted when no responsibility lies on any one particular person.

MR. REILLY: Thank you very much, Professor, and with your courtesy, Mr. Chairman --

THE CHAIRMAN: Mr. Whicher, any questions?

MR. WHICHER: No, I would just like to reiterate what other people have said. I think this is a very well prepared brief. Whether we agree with it or not doesn't deny the fact that much work has been put into it.

One of the things -- I know Mr. Irwin will know far more about this than I will -- but from strictly as a layman I can't see some of the things that have been said about the difficulties of making a percentage of interest on revolving credit. I think we can compare it somewhat with bank interest on personal bank deposits. As I understand it, I think the major banks now pay a definite percentage of interest on minimum bank credits over a three months period. It seems to me that if the T. Eaton Company or the Robert Simpson Company wanted to charge 1% per month on the minimum balance or on the maximum balance, whatever it might be, if that balance were described by legislation, whether it be minimum or maximum, in the case of the banks it certainly is the minimum and I might say it is quite possible for a fellow to put two or three thousand dollars in the bank and only be

paid on twenty-five dollars. He may have had it there for a couple of months and the depositor in a bank has just as much leeway in depositing as the buyer has in buying from Simpson's or Eaton's, so I think that through legislation it could be laid down whether it should be the maximum or minimum balance, therefore they charge so much, whatever it may be. While on the other hand I am quite willing to admit, Mr. Irwin, in consultation with these large retailers, has probably other objections with which I am not familiar.

I must say that I agree with the brief and that someone will have to take the other side in a very capable manner to change my opinion. I respect the fact, of course, that there are always two sides to every question and no doubt we will hear the other side maybe tomorrow or Wednesday.

THE CHAIRMAN: Mr. Belanger? Mr. Bukator?

MR. BUKATOR: Mr. Chairman, you are going to hear it right now. I'm sorry my friend left because he had to get away early, but it will be on the record that while he doesn't agree entirely with the brief but only partly with it, I agree 100% with it and that's the best you have got today. This I have been advocating for quite some time. I think it can be done. I think you can reveal the true interest rate in percentage and I do believe that these tables can be worked out. I have a very simple one sent to me from a finance company in the States and all you have to do is set it at the unpaid balance, bring your slide

out to the $200.00 mark indicating a monthly dollar payment and the interest rate that you pay. Now all I want the people of the Province to know is how much they are paying by way of percentage rate. You have now minimized the objections in such a way that I am going to use this now for my Bible for the rest of the meetings from now on in, Mr. Chairman, until we quit. There is no objection that can't be overcome, it is not insurmountable. I want to compliment you most sincerely, because this is what this Committee has been looking for. Now, as someone said, there are two sides -- I'm very biased, and I don't see where the other side is.

THE CHAIRMAN: Thank you, Mr. Bukator. Mr. Lawrence:

MR. LAWRENCE: Dealing with the American experience, I don't think you indicated -- perhaps I missed it -- in their disclosure legislation, what number of States have got it down to the point where they require disclosure?

MR. ZIEGEL: I think I did mention it, as far as I know it's none so far.

MR. LAWRENCE: None at all?

MR. ZIEGEL: You see, the disclosure problem, true, has been discussed in the United States for several years just as a result of the Depression, but it didn't become a matter of active legislative interest until Senator Douglas brought his Bill up in the Senate and I think this is where the fight has centered, because they see this Bill, if it were adopted,

it would effect a large percentage of all credit sales in the United States, even though it only purported to cover interstate sales. It indirectly would cover a very large proportion of all sales.

MR. LAWRENCE: Even assuming that if we did come to the conclusion that disclosure in percentage terms might be put into a Bill, then we get down to the argument as to whether they should be on a monthly basis or an annual basis. What is your opinion on this?

MR. ZIEGEL: Well, I would be quite happy with a monthly statement. The only difficulties I see about it are of a technical nature. Let's say your annual rate of interest works out at 6½%, how are you going to divide it into 12? You are going to get some factions of 1% and not a very neat looking fraction either. I'm afraid that might encourage some companies simply to round off annual figures, usually by raising them to higher figures than they would otherwise charge. Maybe therefore you might decide to distinguish between the amount involved. I can well see that if the amount involved is small -- say anything less than $300.00 -- that a monthly figure would be quite acceptable, particularly where charge accounts and revolving credit accounts are concerned. On the other hand, you might feel that where larger amounts are involved, where indeed you are much closer to the size of an ordinary bank loan, that there is no reason why the charge wouldn't be expressed in terms of an annual charge.

MR. LAWRENCE: And do you feel that this would be largely ineffective without (rest of sentence inaudible)

MR. ZIEGEL: No, I don't think so, not at any rate until the federal government starts to step into the field and there is not much sign of that. As far as should advertising be regulated, I am, of course, expressing a social value. I think that consumer credit, used wisely, has great benefits to the average consumer. Certainly nothing that I have said today was intended to throw discredit on consumer credit or discourage its use. On the other hand, I would like to see it used wisely and not abuses. I think it is capable of abuse and I think it is being abused in some areas. I think one of the areas is in respect of advertising. I think from the community's point of view I think it's fairly bad if people of very limited means should be encouraged to overextend themselves by these somewhat misleading advertisements. And I think, therefore, that an Act of the English kind -- although it might possibly change some of the existing advertising practices, would do nothing but good in the long run.

THE CHAIRMAN: Mr. MacDonald, do you have any questions?

MR. MACDONALD: Well, I would comment on one question, Mr. Chairman. We have had up until now a pretty formidable parade of witnesses presenting to us the extreme difficulties in coming to grips with this view without straightjacketing the merchandizing

field, without bringing the economy grinding to a halt, claiming that you couldn't have salesmen calculating interest rates when in fact we discovered later in testimony that most of them, at least with their head offices, were operating on tables and things of this nature. I think this testimony today is in the nature of -- Mr. Ziegel has come to bat in the 6th or 7th inning and has hit a home run with the bases loaded. We are balanced out now. I think we have cleared through a lot of these propaganda arguments -- and as far as I am concerned they are propaganda arguments -- I think they have been demolished and we can see more clearly the kind of thing that is feasible if for no other reason than in fragmentary fashion it has been attempted and operated in varying degrees in many other jurisdictions.

I have just one question that I am a bit curious about. What is the explanation for the fact that New Brunswick ran into what appears to be insurmountable administrative difficulties in an Act that apparently was patterned after Quebec, and Quebec has gone on since, very effectively.

MR. ZIEGEL: I think it is the old argument. I think they adopted these minimum down-payment provisions without providing for some appropriate department to enforce them. And I think this is a very common difficulty. I think it explains also why Manitoba hastily withdrew the first version of its disclosure bill. I am speaking, of course, on a very confidential basis. It does happen from time to time

that, through public pressure, a Legislature thinks it a good idea to have an Act on some subject and then adopts it without perhaps giving it as much consideration as it needs. And then you find after you have adopted the Act that all kinds of difficulties for which you haven't provided and which you have to deal with and of course that puts you in a difficult position and the whole Bill is discredited and the government ends up by agreeing to change the whole Bill. This is precisely what happened in Manitoba's case. As far as I know there were no hearings before the Bill was adopted and no briefs were received. The Bill was very poorly drafted from a lawyer's point of view, it was highly ambiguous and didn't define such important things as the meaning of interest. Of course the business community was quick to point it out in addition to their usual opposition to the Bill, until the government was very much on the defensive and in the long run they merely gave up the whole fight and deleted the interest disclosure requirement from the Bill.

MR. MACDONALD: One other question, Mr. Chairman. In your references to Consumer Councils, cil and sel, do you see a Consumer Council as being able to play an effective role at the provincial level, or federal level, or both? Or what?

MR. ZIEGEL: I think they could operate successfully at both levels although personally I would like to see a federal-provincial Council because this is an area where responsibility is

apportioned between the two levels of government, it is an area that has very little political content, it is an area where cooperative federalism could work very well. In any event I think some government Department or some official charged with consumer affairs is very necessary.

MR. MACDONALD: I'd like to get a clear picture of the functions of the Counsel - s-e-l-; the counsel is presumably setting the whole field and making recommendations, the consumer counsel. Is this a person who acts in a general sense as a lawyer on behalf of the public, or what?

MR. ZIEGEL: Yes, on behalf of the public, indeed, but he's not very concerned with legal disputes. I think counsel, an American counsel, indicates anybody who is concerned to give advice in a general sense, just as we talk about an investor's counsel. And I think a counsel with an "s" very basically fills the same function as a council with a "c", except there aren't so many people doing it.

MR. MACDONALD: He might even be a full-time personnel of the Council?

MR. ZIEGEL: Well, you could have. As I mentioned in terms of the British Council, with a "c" they do have a full-time Director who, in effect, plays the same part as a counsel would do in the States.

THE CHAIRMAN: Mr. Oliver?

MR. OLIVER: I haven't anything, Mr. Chairman. This states very well in supporting the

point of view that I hold and I don't have anything further to add.

THE CHAIRMAN: Mr. Kerr, do you have a question?

MR. KERR: I was just wondering, Mr. Chairman, you mention, sir, on page 34, some of the questions that have been raised by the seller or the lender, there are various ways of calculating percentage rates to get a specific result. Your answer is very short. I was just wondering if there is more to this objection than that?

MR. ZIEGEL: No. In fact this is one of the weakest objections that can be raised. Nobody has ever denied that there are three different formulas, have been as many as four, nobody denies either that they give different results. The only question is whether this problem can be solved. I say that it can easily be solved if the Act lays down which particular formula shall be followed.

MR. KERR: This is mathematically sound, is it?

MR. ZIEGEL: Yes. I think the constant ratio formula, for example, or the actuarial method is --

MR. IRWIN: The direct ratio method is most accurate.

MR. ZIEGEL: Right.

MR. KERR: The sample conditional sales contract that you have -- I notice it has the promissory note attached. There is an interest rate

charged after the maturity?

MR. ZIEGEL: Yes.

MR. KERR: This would indicate that some of these finance companies feel that it's difficult to charge an interest rate, or show an interest rate, as a number of dispersed payments, or a total of dispersed payments, but after maturity it is a simple thing. For example, Household Finance does this, they charge interest rates on the amount of money that is being borrowed. I think you will agree that there is a difference between the functions of Household Finance, for example, and IAC. One is primarily in the business of lending money and the other is,-- I hope you think there is a difference, maybe you don't, --

MR. ZIEGEL: No. I'm glad you raised this point. From the point of view of an economist, as I understand it, there is no essential difference in the functions. If you want to borrow money to buy a car, you can either go to a bank or a small loans company and borrow that money or you can purchase the car on a conditional sales contract. Now the economist says in either case the purchaser is getting the use of somebody else's money for the agreed period. Now whether he is getting the use of the bank's money or the small loans company's money or the dealer's money or the sales finance company, it doesn't matter, he is still getting the use of somebody else's money and the economist calls the use of that money "credit". It's only in point of law that we distinguish between these various forms of credit. We

call one a finance charge and the other one interest. To the economist this doesn't make sense at all because he is concerned with the charge in each case should be denominated by the same terminology.

MR. KERR: I think the finance companies --

MR. ZIEGEL: May I just add one word? In order to draw a valid functional distinction you could speak, let's say, between purchase money credit and other forms of credit. Purchase money credit means title credit used to acquire new goods whereas the other type of credit money might serve different purposes.

MR. KERR: I was just wondering if the whole contract, the conditional sales contract, for example, that includes insurance charges and certain other recording fees and things like this, and then also has -- some of these companies have -- what they call a merit plan where you pay off some months before maturity -- that still wouldn't complicate the idea of showing the interest rate charged?

MR. ZIEGEL: No. In my opinion it would not. There are two points I could have added to my brief. One is historical. The reason why many of these finance companies and retailers state the finance charge the way they do is quite accidental. They did it initially because they were anxious not to become involved in interest legislation. This is certainly true down in the States where interests have been closely regulated for a long time. Now when

instalment sales first became common they wanted to make sure that their charges did not become subject to their usury laws. This is why they computed the charge in terms of an add-on charge, not because there was some technical difficulty about stating it as an interest rate.

Secondly, any retailer and any finance company which has a sizeable operation already have to use a percentage method in computing its dollar and cents charges. They must know what kind of return they want to get on their money and when they work that out they add-on their basic operating cost, fixed cost, and add the two together. So that, in effect, already the finance company has to compute, initially, part of its charges in terms of an interest rate and convert it to a dollar and cents rate and then it adds on its fixed operating cost.

MR. EDWARDS: Mr. Chairman, I would just like to make the statement -- I think we all know we don't get anything for nothing -- and I don't see any reason why the interest charges can't be on a percentage basis.

THE CHAIRMAN: Anything else, Mr. Edwards? Mr. Rowe, do you have any questions?

MR. ROWE: I'd just like to compliment Professor Ziegel on the comprehensive brief as well. He has sort of summed up our difficulties here on the Committee even to the objections and some of the answers to them too. It looks as though the answer to

objection (g) on the Addendum may be subject to solution if our friend here, our mathematical wizard, can get a percentage. Objection (a), however, as you state, is a matter of speculation where this business of competition, and high advertising, and certainly we are subject to high advertising, pressure advertising, can conceivably tend to drive the true cost underground. Think of the price of suits for one. You look at a rack of suits and I defy anyone to say that that suit should sell for 57.50 or 59.50 -- anything could be hidden there. The same with chesterfields and many, many other items. Each dealer has dozens and dozens of different specifications and prices. You can go from one dealer to another with a list of the various specifications but it would be quite a job to fully compare. So that therein, I think, is one of the big problems -- but you pointed it out very well there. You feel that the high pressure advertising which is part of our modern life is apt to drive these true costs of credit underground and leave the buyer just as confused as ever?

MR. ZIEGEL: I'd say it is factually clear. I know in England they have had one or two cases where this happened. A furniture company had for some time been advertising 5% rates -- these were flat rates -- but they only represent a very small percentage of the total retail sales. I have not noticed that it has made any difference in their business one way or the other. I might add, however, that the recent English 1964 Act prohibits the stating

of charges as a flat percentage but requires them to be stated as an effective rate. Let's say if you advertise finance charges of 5% you would be penalized if the 5% represents the flat charge and not the effective rate. This too may stop some of this attempt to mislead the consumer.

THE CHAIRMAN: Anything else, Mr. Rowe? Mr. Irwin?

MR. IRWIN: I just thought I would make this comment to Mr. Rowe's question. It's rather interesting to find this argument advanced, and Mr. Ziegel put it very well; I think this is something that has been added to the ammunition of the opponents of disclosure, a kind of reaching after-thought. The interesting thing from my observation, as a businessman or an advisor to businessmen, is that under the present arrangement whereby the price is stated as one thing and finance charges are not usually stated but turn out to be something at the time that the contract is signed, that the transfer of costs -- these people make a great point of the transfer of the finance charges to the price. The fact of the matter is on a wholesale scale the transfer of the price of the article is now being transferred to the finance charge. And on a substantial scale -- so that they are, in practice, defeating their own argument -- that transfer should not take place. In fact it is taking place now on a very wholesale scale. In other words, the price is being reduced and the recovery is being made in the finance charge, so how

anybody can advance this as an objection I can't possibly imagine.

THE CHAIRMAN: Are there any other questions, gentlemen?

MR. LAWRENCE: Are you going to or have you made a submission to the House of Commons?

MR. ZIEGEL: I haven't so far. Frankly I don't know what the status of that Committee is at the moment.

THE CHAIRMAN: We hope later to have a joint meeting with them to discuss these problems that you have outlined here today, and hope that we can come to some common --

MR. ZIEGEL: There is a lot of additional problems, Mr. Chairman, if I may add a word, with the constitutional position now, because as I read the decision of the Supreme Court in the Bothwick case, it seems to say it all depends on how you state your finance charge. If it is stated in terms of a percentage rate, as a lawyer understands interest, then it would come within federal regulation. If, however, it is stated some other way, then it falls under provincial regulations. This is a very difficult situation. This matter, I know, was given some consideration by Senator Kroll's Committee -- one of the grounds for opposition to the Bill has been the constitutional grounds and the Clerk to this Senate expressed his opinion that it would be constitutional for the federal government to legislate the matter, but he seems to be relying heavily on the

federal government's criminal law apart from any power it might have under the interest clause, section 91 of the BNA Act. As I say, it is a difficult area and I think it would be a brave lawyer who was to be dogmatic. But I think this might fairly be said that it's difficult to see how a mere provincial law requiring the statement of finance charges as a percentage rate could or would necessarily be regarded as a law which regulates interest. There is a difference between requiring disclosure of something and regulating something.

MR. SEDGWICK: We might not be able to say, "You cannot charge more than 20%". But we may be able -- I agree with you, I think we are able -- to say "You can charge anything you like as long as you tell them what it is".

MR. LAWRENCE: That would come under the Unconscionable Act.

MR. SEDGWICK: Within the field, of course, but at the moment I think that's the position on our legislation at the present moment.

MR. LAWRENCE: (Inaudible)

MR. SEDGWICK: Do you think we could say to the banks that you must make this disclosure?

MR. ZIEGEL: There are one or two Privy Council decisions which seem to say that the banks, the federal banking powers, are extremely wide, but it does say banks and banking --

MR. SEDGWICK: Mr. Lawrence is right then that if we pass legislation that applies,

shall we say, to Household Finance, they are compelled to say that they charge 2% per month and yet the banks can still say they charge 6% although they charge 10.

MR. ZIEGEL: Certainly I agree entirely this is a field -- perhaps there is none better -- where the opportunity is ripe for federal-provincial cooperation.

MR. MACDONALD: But, keeping the banks apart, if our objection to this for disclosure-- this could be judged under the Unconscionable Transactions Act -- perhaps placing the powers of the Provinces in a stronger position than even the federal government -- they are dealing with the totality of the whole thing.

MR. SEDGWICK: I don't think -- (rest of sentence lost in change of belts)

MR. ZIEGEL: I don't think there would be anything in the Unconscionable Transactions Relief Act that would --

MR. MACDONALD: No, I said the banks apart -- apart from the banks. We are dealing with the totality.

MR. SEDGWICK: Yes, except the point that is made -- Mr. Lawrence has made it -- is that it would be unfair if we are to compel lender A to state accurately his interest rate and have no power to compel lender B, a big lender indeed, the banks, to state theirs. Unless there were complimentary legislation.

MR. ZIEGEL: Of course it is true to say that there are many areas in which a provincial government cannot legislate. I don't think this is a sufficient argument to prevent legislation in areas in which it does have jurisdiction. One often acts as a governizing agent for Acts in the other. And I think now that the Bank Act is due for revision next year, this question of requiring banks to state their finance charges as an effective interest rate may well be raised. I think it should. I'm very much concerned that such reputable agencies as the banks have to state their finance charges in four different ways -- I think it is most unfortunate and I'm sure there is not one consumer in a hundred that appreciates the different methods being used by the banks.

Of course there is good reason why they, in part, have to behave the way they do and that is because of the 6% ceiling in the Act. I think it is most unfortunate they have to use these devious ways.

MR. SEDGWICK: Well I've always thought that banks and banking was our chief constitutional problem, not interest, Mr. Lawrence. Let's confine ourselves to disclosure.

MR. LAWRENCE: (Inaudible)

MR. SEDGWICK: Well, that's a federal matter which we don't deal with.

MR. ZIEGEL: You mean raising the jurisdiction to $5,000.00, or something like that?

Certainly I think a good case can be made out for that. You mean so that it would also cover things like second mortgages?

MR. LAWRENCE: Yes.

MR. ZIEGEL: Certainly. In fact I think some of the American Acts do go to limits beyond $1,500.00. In any event many of the American Acts have general usury laws which regulate the maximum rates of interest.

MR. SEDGWICK: They are State laws?

MR. ZIEGEL: Yes.

MR. SEDGWICK: We would have no power to pass any State laws.

MR. ZIEGEL: Indeed not, but I am saying there is precedence -- practically every State has general usury legislation and they discriminate between different types of agencies. I agree entirely, Mr. Lawrence, that a strong case may be made out that all consumer loans, say, up to $5,000.00 shall be subject to a statutory maximum.

MR. KERR: Do you think if the Bank Act was changed there would be much objection to disclosure?

MR. ZIEGEL: On the part of the banks? I can't actually see that it should. They are not charging exorbitant rates. The maximum they charge even now comes out to about 11.2% per annum. I don't see why they should be afraid of saying this.

MR. SEDGWICK: I don't think they are -- it's just the rule of the 6% ceiling.

MR. KERR: It makes it tough on the finance companies.

MR. SEDGWICK: That's what I had in mind. That 6% that the banks say they charge and it isn't so and then you look at Household Finance document here, you see, which conforms to the Small Loans Act, so the comparison-minded shopper is likely to say: "My God, I can get it for 6% at the bank and I have to pay 1% a month here" -- and that isn't true. He's paying 1% a month at the bank but the bank restrictions -- which I am sure they don't welcome -- tell them to put it that way, as Professor Ziegel says.

THE CHAIRMAN: Anything else, gentlemen?

Well, Professor Ziegel, you have come quite a long distance to be with us today. I don't think if we were looking back and planning our work you could have come at a better time. There certainly have been some foggy areas in our thinking and I think your brief has done a lot to disclose some of those areas which we were not too clear on. We certainly appreciate your coming and, as has already been said, this is one of the finest briefs we have had and I would like to say we are very grateful to you and thank you.

This meeting is adjourned, gentlemen until ten o'clock tomorrow morning

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